THE JURY SYSTEM IN ONTARIO

PAPER PREPARED

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WILLIAM RENWICK RIDDELL, L. H. D., Etc.,

of TORONTO (Justice of the Supreme Court of Ontario)

FOR THE

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By the Honorable William Renwick Riddell, Toronto, Justice of the Supreme Court of Ontario.

When Canada was conquered and became part of the British Empire, the jury had no part in its jurisprudence, the law in force being the Coutume de Paris modified by local ordinances.

In 1763 the English law, civil and criminal, was expressly introduced by Royal Proclamation (October 7th, 1763), having been somewhat informally administered for the three preceding years by Courts presided over by British military officers.[1]

The English law did not prove entirely satisfactory to the French-Canadian; and in 1774 the Act 14 George III, c. 83, sec. 8, provided that in "all matter of controversy relative to property and civil rights, resort shall be had to the laws of Canada as the rule for the decision * * * and * * * be determined agreeably to the said Laws and Customs of Canada." Sec. 11 continues the English Criminal Law on account of its "certainty and brevity * * * and the benefits and advantages resulting from the use of it." Power was given to the Governor and Legislative Council to change either civil or criminal law.

[1]There is some doubt as to the administration of law during the three years of military rule. In the Montreal and Three Rivers Districts it is quite certain that there were Courts held by officers of the militia, French-Canadians, who almost certainly decided civil cases according to what they believed to be French-Canadian law — they were directed by the Governors to decide "avec justice et droiture." They do not seem to have exercised criminal jurisdiction and there was an appeal to the commanding officers of the Royal troops, and a second appeal to the Governor himself.

In Quebec District (Amherst having divided the inhabited parts of Canada into these three Districts), Murray, the Governor, seems to have had Courts of British, not Canadian, officers. These, it is probable, rather leaned to English law.

There were no settlements in the territory afterwards Upper Canada at that time; but during and particularly after the Revolutionary War, settlers made their way across the Rivers St. Lawrence, Niagara and Detroit into the vacant British wilderness. These were chiefly from New York, New Jersey and Pennsylvania, but some came from other States, the Cavaliers of the new Revolution who preferred their old flag and their allegiance to anything the new Republic could offer.

They brought with them their traditional law and customs; and the foreign law imported from France they could not reconcile themselves to. The detestation of the English Civil Law by the French Canadian, and the detestation of the French law by the British Canadian, had much to do with the law of 1791, 31 George III, c. 31, which divided Canada into Upper and Lower Canada, gave each a legislature and left to each to select and make its own law.

In 1788 Lord Dorchester had divided into four districts the territory afterwards Upper Canada, and had erected Courts of Common Pleas with civil jurisdiction in each district. In the district furthest west, Hesse District, including Detroit, only one Judge was appointed, William Dummer Powell, a barrister of high standing, born in Boston, educated at the Inns of Court who afterwards became Chief Justice of Upper Canada. In each of the other Courts three Judges were appointed, all laymen.

In these Courts all cases were tried without a jury.

But the English Criminal Law was in force. Courts of Quarter Sessions were held for minor offences, and of Oyer and Terminer and General Gaol Delivery for all criminal offences. In these Courts there was a jury.

The first Parliament of Upper Canada met at Newark (Niagara.) Of the sixteen Members of the House of

Assembly at least twelve were United Empire Loyalists, one was an English Barrister sent out as Attorney-General, another a son of an English army officer (the British Commandant at Detroit[2]), and only one a French Canadian.

The very first act passed by this Parliament provided that "the authority of the * * * laws of Canada * * * forming a rule of decision in * * * matters of controversy relative to property and civil rights shall be annulled, made void and abolished." 32 George III, c. 1 (U. C.), s. 1. Section 3 directed that resort should be had to the laws of England as the rule for the decision of the same.

Immediately thereafter was passed Chapter II of the same Statute: "From and after the 1st day of December * * * 1792 all and every issue and issues of fact * * * in any action real, personal or mixed and brought in any of His Majesty's Courts of Justice within this Province shall be tried and determined by the unanimous verdict of twelve jurors duly sworn for the trial of such issue or issues which Jurors shall be summoned and taken conformably to the Law and custom of England;" and the jury was empowered to bring in a special verdict.

In this way the English Jury System was introduced into Upper Canada in its entirety, with the exception of the Special Jury; this was introduced by the statute next to be mentioned.

In 1794 was passed 34 George III, c. 1, "An act for the Regulation of Juries," which provided for a list being delivered to the Sheriff by the Clerk of the Peace, of the householders for the Sheriff to draw up his panel. A

[2]David William Smith (afterwards Sir David William Smith, Bart.,) was the son of Major (afterwards Colonel) John Smith and was best known as Commandant at Detroit, but he had become Commandant at Niagara before the Parliament met.

penalty not less than 20 shillings ($4.00) nor more than £3 ($12.00) was imposed upon a juryman who neglected his summons; and each juryman was to receive one shilling (20 cents), increased to 25 cents in 1822, by 2 George IV, c. 1, s. 30, from the plaintiff or his attorney for each case he was sworn in.

The complete English system of Common Law Courts was introducted by the Act 34 George III, c. 2, which instituted a Court of King's Bench for the whole Province, and abolished the Courts of Common Pleas which, as we have seen, were local Courts.

The Courts which were erected, 34 George III, c. 3, for the collection of small debts (between $8 and $60) and which by a course of statutory evolution finally became the County Courts, also provided for jurors " for the trial of each issue." The still lower Courts which derived their being from legislation in the first session (32 George III, c. 6) and whose jurisdiction was limited to $8.00, had no jury; the issues of both law and fact were in these Courts decided by Justices of the Peace. These Courts, called Courts of Requests, ultimately became the Division Courts of the present time.

In 1808, an Act, 48 George III, c. 13, was passed for the better regulation of Special Juries in both civil and criminal cases.

In the Common Law Courts the first break in the jury system was made in 1868 by the Law Reform Act of that year, 32 Victoriae (Ont.), c. 6, which by section 18 enacted that all issues of fact in the Superior Courts of Common Law or the County Courts (formerly known as District Courts) and all assessments of damages might be tried by a Judge with a jury, and should be so tried unless one of the parties filed with his last pleading a notice requiring a jury.

Even if a jury notice was given the parties might still agree at the trial to dispense with the jury; and even if a jury notice was not served, the Judge might require the action to be tried or damages assessed by a jury. The Judge, however, had no power to strike out the jury *in invitum,* where a jury notice had been served.

The Administration of Justice Act of 1873, 36 Victoriae (Ont.), c. 8, took the matter further and laid down the practice as to juries substantially as it is at present in the Supreme Court and the County Courts. The statute allowed defences on equitable grounds to be set up in common law actions as well as purely money demands to be proceeded for although the plaintiff's right was purely equitable. Such cases might be transferred to the Court of Chancery, but the Common Law Court might itself try them out and give complete relief. Section 16 provides that when equitable issues were raised, the case should be tried without a jury unless the Court or Judge otherwise ordered. Section 17 is as follows:

> "In actions of libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution and false imprisonment, all questions which might heretofore have been tried by a jury shall be tried by a jury, unless the parties * * * waive such trial."
>
> Sec. 18. "All other issues shall be tried as heretofore, unless the Court * * * or a Judge * * * upon application having been made before the trial or unless the presiding Judge upon the trial directs or decides that the issue or issues shall be tried and the damages assessed without the intervention of a jury."

Section 20 gave power to the Trial Judge to require the jury to give a special verdict.

Not long after the law giving the Judge power to try all but the excepted cases without a jury, a member of the

Opposition introduced a Bill into the Assembly under the taking title, "A Bill to restore to Her Majesty's subjects their right to trial by jury;" but it was defeated by a majority of one vote.

A Court of Chancery was instituted in 1837 with a Vice Chancellor; he did not go circuit; nor did any member of the Court on its reorganization in 1849 with a Chancellor and two Vice Chancellors, but the Court sat and all business was done in Toronto. In 1850 an Act was passed allowing the appointment of Masters and Deputy Registrars in the country but the Court continued to sit in Toronto.

In 1857, the Act 20 Victoriae (Can.), c. 56, by s. 6, provided that the Judges should take circuits for the transaction of business; under this Act Upper Canada was divided by the Court into three Circuits including such towns as were thought proper. The same Act authorized the Court of Chancery to try any issue with a jury instead of directing a feigned issue, or sending the matter to a Common Law Court, and this continued until the Judicature Act of 1881 was passed. I never knew of this being done.

This was the state of the law at the time of the passing of the Judicature Act in 1881, 44 Victoriae (Ont.), c. 5, which consolidated the two Common Law Courts of Queen's Bench and Common Pleas and the Court of Chancery. Section 45 provided that subject to rules of Court the mode of trial should be as was then provided by law for like cases in actions in the Common Law Courts, and in cases over which the Court of Chancery had exclusive jurisdiction according to the existing practice of the Court of Chancery. This provision has been repeated in substance and with but slight variations in the subsequent legislation.

In 1896 the Statute 59 Victoriae (Ont.), c. 18, directed actions against municipal corporations for damages for non-

repair of sidewalks, streets, etc., to be tried by a Judge without a jury.

As the law now stands there are these classes of cases:

1. Those which must be tried by a jury unless the parties in person or by solicitors or counsel consent. These are cases of libel, slander, crim. con., seduction, malicious arrest, malicious prosecution and false imprisonment. 3-4 George IV, c. 19, s. 53.

2. Those which must be tried by a Judge, *i. e.*, actions against a municipal corporation and for non-repair. 3-4 George IV, c. 19, s. 54.

3. Those which are tried by a Judge unless he otherwise orders: (a) Equitable issues, s. 56 (4). (b) See class 4.

4. In other cases if either party desire a jury, he files and serves a jury notice within four days of the close of the pleadings. If the other party submit, the case goes on the jury list for trial. If the other party object, he may move in Chambers before a single Judge. For a long time there was a conflict of judicial opinion as to the principle to be followed in striking out a jury notice. Finally we made a rule making it obligatory upon the Judge in Chambers to strike out the jury notice "when * * * it appears to him that the action is one which ought to be tried without a jury." C. R. 398. It is expressly provided, however, that the refusal of a Judge in Chambers to strike out the jury notice shall not interfere with the right of the Trial Judge to strike it out; nor does the order of the Judge in Chambers striking out a jury notice interfere with the right of the Trial Judge to have the case tried by a jury.

If a jury notice is not served the case goes on the non-jury list and will be tried by a Judge without a jury unless the Judge himself prefers it to be with a jury.

At every Assize town for the jury sittings there are two lists prepared, one a jury list (which is placed first) and the other a non-jury list. It is a common practice for the Trial Judge at the beginning of the sitting to run over the records and strike out the jury notice in such as he thinks proper.[3] It is not uncommon to place the records in such instances where they should have been in the first instance on the non-jury list; thereby the offending may be penalized, losing time waiting for the action to be tried.

In most of the Assize towns there are also non-jury sittings; at these no jury cases are entered, but if a case should appear which the Judge thinks should be tried with a jury, he may adjourn it to the jury sittings. (I have never known a case of this kind.)

At Toronto there are separate sittings for jury and non-jury cases, the non-jury sittings being practically continuous and the jury sittings six to ten weeks in the year. If a case comes before the Judge presiding at the jury sittings which he thinks should not be tried with a jury, he sends it across the hall to the Non-Jury Court. No doubt if the reverse were to happen the record might be transferred in the opposite direction. But, as I have said, I never knew a case of that kind.

It has been pointed out that by the Statute of 1792 the jury was authorized to bring in a special verdict — which goes back to the Statute of Westminster the Second, 13 Edward I, c. 30, s. 2.

The Administration of Justice Act, 1873, 36 Victoriae, c. 8, s. 20, made it unlawful for a jury (except in an action of libel) to bring in a general verdict if the Judge should otherwise direct and made it their duty if the Judge so

[3]While technically an appeal may lie against the order of the Judge at nisi prius striking out a jury notice, the practice is almost unknown. I know of but two instances, both unsuccessful.

directed to bring in a special verdict. This got rid of much of the evils of a general verdict, but it was not wholly satisfactory. Accordingly in 1874 an Act was passed, 37 Victoriae, c. 7, which by section 32 provided that except in actions of libel, slander, criminal conversation, seduction, malicious arrest, malicious prosecution and false imprisonment, the Judge instead of taking a general or special verdict, might direct the jury to answer any questions of fact stated to them for that purpose, and made it the duty of the jury to answer the questions and abstain from finding a verdict. Upon the answers to the questions the Judge enters the verdict. (The exceptional cases are now cut down to libel alone.)

Before 1895 civil juries were required to be unanimous (as criminal juries still are); but in that year by the new Judicature Act, 58 Victoriae, c. 12, s. 112 (3), it was declared sufficient if ten jurors agreed in the verdict or in the answer to the questions. The point was raised more than once but never decided whether the same ten must agree in the answers to all of the questions. This question was laid to rest by the Judicature of 1913, 3-4 George V, c. 19, s. 58 (3), which answered it authoritatively in the negative.

In the case of a special jury *(rara avis in terris, nigroque simillima cygno)*, unanimity is still required — I have seen two special juries in my thirty years' experience, and do not expect to see another. I do not know the slightest advantage they present, and it is not unlikely that that "institution" will die of inanition.

The jury system in the Supreme Court and the County Courts, I have now explained.

A Surrogate Court is found in each county or union of counties, presided over by a Judge who (in every instance but one) is also the Judge of the County Court. This Court

deals with grants of probate and administration, executors' accounts and the like.

In 1793 by 33 George III, c. 8, Surrogate Courts were established in every district, but no power was given to try issues of fact with a jury. In 1855, the Act 22 Victoriae (Can.), c. 93, by s. 18, gave power to the Judge of the Court to try any question of fact with a jury; and this is still the law, 10 Edward VII, c. 31, s. 28, which directs the trial to take place at the next sittings of the County Court. This is to save the expense of making a special call for a jury. The jurors in all these Courts are of the traditional number of twelve.

The lowest Court of all is the Division Court which is "the poor man's court." This is presided over by a County Court Judge who tries practically all the cases without a jury. The origin of the Division Court is to be found in the Court for small debts provided for in the Act of 1792, 32 George III, c. 6, and called the Court of Requests. This was presided over by two or more Justices of the Peace till 1833, when by the Act 3 William IV, c. 1, it was enacted that Commissioners should be appointed as Judges by the Governor. In 1841 the Act 4-5 Victoriae, c. 3, provided that the Acts should be called Division Courts and be presided over by the Judge of the District Court (the District Courts became County Courts in 1849, 12 Victoriae, c. 78, s. 3). The same Act, 4-5 Victoriae, c. 3, by sec. 29, gave either party the right where the claim exceeded £2.10.0 ($10.00) to require a jury on paying the proper fees in that behalf, but in all other cases the Judge remained the final and only authority. In 1845, the Act 8 Victoriae, c. 37, by sec. 6, made it necessary that the jury should be unanimous. The law remains the same except that to entitle to a jury the claim must now be over $30

unless in tort or replevin when the amount must be over $20.

In the Division Court also, even if the parties have not demanded trial by jury, the Judge may have any fact or facts controverted in the cause tried by a jury. This provision was introduced in 1853 by the Statute 16 Victoriae (Can.), c. 177, s. 11, and has been in force continuously ever since.

In the Division Court the jury is composed of five persons; in all other Courts of twelve.

The number of cases tried in the Division Court with a jury is very small indeed, almost negligible. In the Division Court in Toronto last year were tried 2,853 cases without a jury, and one with a jury.

The official report of the Inspector of Division Courts for 1913, just to hand, shows that in 1913 the total number of suits entered in these Courts in the whole Province was 63,675.

And the number of juries called for 117, a little less than one-fifth of one per cent.

The whole amount claimed in the suits brought was about two and a half millions; the cost of the juries averaged a few cents over $10.

In the Surrogate Court at Toronto, *i. e.*, the Surrogate Court of the County of York, there never has been a case tried with a jury, and extremely few in the Province. (I know of only two in my thirty years' experience.) There were six cases tried in Toronto without a jury in 1913.

In the County Court at Toronto there came on for trial at the jury sittings 67 cases, of these the jury notice was struck out in 13, leaving 54 actually tried with a jury.

Including those in which the jury notice was thus struck out there were 238 tried without a jury, *i. e.,* in 67 cases a jury was asked for by one party or the other, while in 225 both parties desired the trial to be by the Judge without a jury. I may add that of these 292 cases, 40 were appealed.

In the Supreme Court in Toronto in 1913, 71 cases came on for trial at the jury sittings, in 2 the jury notice was struck out and 69 were tried with a jury. One hundred and ninety-three were tried without a jury.

Most of the cases in which a jury is permitted are for damages against railways, street railways, automobiles, etc., and especially in cases of injury to workmen. If actions by workmen against their employers be taken from the jurisdiction of the Courts as is suggested, the jury cases will be very largely cut down.[5] The number of cases in which a jury is asked for is not increasing but rather the reverse, and there is no desire on the part of the people to take away from the Judges the power of dispensing with a jury.

So far, I have been speaking of civil cases. I shall now add something as to criminal cases.

The old common law rule as to trial by the Quarter Sessions and Courts of Oyer and Terminer long remained in force but it became cumbrous.

In 1834 by the Act 4 William IV, c. 4, power was given to a Justice of the Peace to try cases of assault and battery not accompanied with attempts to commit felony, also malicious injury to property (not felonious), and dis-

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[5]Legislation has now been passed coming into force during the present year which will relieve the Courts of these Workmen's Compensation cases, thereby reducing very materially the percentage of jury trials.

turbing religious worship, but an appeal was given to any one so convicted to the Quarter Sessions and the appeal was before a jury.

This it will be seen was an interference with the traditional right of trial by jury in every criminal case. The procedure was found advantageous, and from time to time power was given to Justices, one or two, to try other offences. I do not intend here to give a history of evolution but simply to state the law as it at present stands.

By the British North America Act of 1867, 30-31 Victoriae (Imp.), c. 3, s. 91 (27), the Dominion was given jurisdiction in "the Criminal Law, except the constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters."

Notwithstanding this the Province has the power to make the violation of any of its enactments a crime and to enable municipal corporations to make by-laws and to make violation of such by-laws a crime; these crimes are tried by Justices of the Peace without a jury. But in these cases the word crime is used in a broad sense. In crime proper, the Dominion has full and exclusive jurisdiction, and the law of crime has been codified by the Dominion Parliament. It is now to be found in the Revised Statutes of Canada (1906), c. 146, with a few amendments.

Crimes are divided into indictable offences and offences not indictable. The latter are tried without a jury, the former in most cases may be tried without a jury if the accused prefers.

Non-indictable offences are as follows (I add the trial tribunal):

Sec. 83. Resisting a warrant for searching for a deserter.

Two Justices of the Peace.

Sec. 104. Sending challenge to fight a prize fight.
One Justice of the Peace.

Sec. 105. Fighting a prize fight.
One Justice of the Peace.

Sec. 106. Being present at a prize fight.
One Justice of the Peace.

Sec. 107. Leaving Canada to engage in a prize fight.
One Justice of the Peace.

Sec. 116. Carrying offensive weapons so as to cause terror.
Two Justices of the Peace.

Sec. 118. Carrying pistols, air-guns, etc.
One Justice of the Peace.

Sec. 119. Selling pistols, etc., to minors under 16.
One Justice of the Peace.

Sec. 119. (2). Selling pistols, air-guns without keeping record.
One Justice of the Peace.

Sec. 120. Having pistols, etc., on person when arrested.
Two Justices of the Peace.

Sec. 121. Having pistols on person with intent to do harm.
Two Justices of the Peace.

Sec. 122. Pointing firearm or air-gun at anyone.
Two Justices of the Peace.

Sec. 123. Carrying bowie knife, dirk, etc.
Two Justices of the Peace.

Sec. 124. Carrying in city or town a sheath knife.
Two Justices of the Peace.

Sec. 141. Taking liquor on board H. M. ships, etc.
Two Justices of the Peace.

Sec. 146. Having any weapon in possession after Proclamation forbidding same.

One Justice of the Peace.

Sec. 147. Or conceals same.

One Justice of the Peace.

Sec. 151. Selling or giving liquor after Proclamation.

One Justice of the Peace.

Sec. 205. Public indecency.

Two Justices of the Peace.

Sec. 208. Theatre proprietor or lessee permitting indecent play, etc.

One Justice of the Peace.

Sec. 84. Persuading enlisted men to desert, etc.

One Justice of the Peace.

Sec. 126. Refusing to give up weapon to Justice of the Peace.

One Justice of the Peace.

Sec. 201. Disturbing religious worship.

One Justice of the Peace.

Sec. 370. Stealing dogs, etc., worth less than $20.

One Justice of the Peace.

Sec. 385. Steals from or disturbs Indian graves, etc.

One Justice of the Peace.

Sec. 441. Being in possession of seamen's property, etc.

One Justice of the Peace.

Sec. 208 (2), (3). Taking part in same as actor or otherwise.

One Justice of the Peace.

Sec. 229. Looking on at common gaming house.

Two Justices of the Peace.

Sec. 230. Reviling or obstructing constables in disorderly house.

Two Justices of the Peace.

Sec. 239. Vagrancy.
One Justice of the Peace.

Sec. 287. Leaving hole in an unguarded, etc.
One Justice of the Peace.

Sec. 374. Stealing trees, shrubs, etc., not under 25c.
One Justice of the Peace.

Sec. 375. Stealing plants, roots, etc.
One Justice of the Peace.

Sec. 376. Stealing cultivated roots, etc.
One Justice of the Peace.

Sec. 377. Stealing part of fence, etc.
One Justice of the Peace.

Sec. 393. Killing or wounding house dove or pigeon.
One Justice of the Peace.

Sec. 395. Having shrubs, roots, fence in possession.
One Justice of the Peace.

Sec. 401. Keeping anything unlawfully obtained.
One Justice of the Peace.

Sec. 430. Secretes or offers for sale any part of wreck, etc.
Two Justices of the Peace.

Sec. 431. Buying marine stores from minors under 16.
One Justice of the Peace.

Sec. 436. Having public stores in possession.
Two Justices of the Peace.

Sec. 437. Creeping or dredging near H. M. ships.
Two Justices of the Peace.

Sec. 492. Falsely claiming Royal Warrant.
One Justice of the Peace.

Sec. 493. Importing goods forbidden.
One Justice of the Peace.

Sec. 500 (3). Defacing public notices by companies.
One Justice of the Peace.

Sec. 508. Receiving trading stamps.
One Justice of the Peace.

Sec. 519. Destroying goods, etc., on railways, etc.
One Justice of the Peace.

Sec. 521 (2). Attempt to destroy, etc., telegraphs, etc.
One Justice of the Peace.

Sec. 530. Destroying boundary fences or posts

Sec. 530 (2). or attempting to do so.
One Justice of the Peace.

Sec. 533. Destroying trees, etc.
One Justice of the Peace.

Sec. 534. Or other vegetable production.
One Justice of the Peace.

Sec. 535. Or cultivated roots, etc.
One Justice of the Peace.

Sec. 535 (2). Or attempting to do so.
One Justice of the Peace.

Sec. 537. Killing or injuring dogs, etc.
One Justice of the Peace.

Sec. 539. Wilfully committing damage of any other kind.
One Justice of the Peace.

Sec. 542. Cruelty to animals.
Two Justices of the Peace.

Sec. 543. Building or keeping a cock-pit.
Two Justices of the Peace.

Sec. 544. Railway, etc., transporting live stock without food, etc.
One Justice of the Peace.

Sec. 545 (2). Refusing admission to constable searching, etc.
One Justice of the Peace.

Sec. 551. Making or issuing business cards, etc., like a bank-note, etc.

Two Justices of the Peace.

Sec. 554. Manufacturing or importing copper coin.

One Justice of the Peace.

Sec. 566. Uttering defaced coin.

Two Justices of the Peace.

Sec. 567. Uttering copper coin (other than current copper coin).

One Justice of the Peace.

It will be seen from the above how many offences there are in which the accused has not the option of being tried by a jury but must submit to trial by one or more magistrates. These magistrates are not as a rule professional men, but are nominated *pro vita aut culpa* by the Provincial Administration.

There are a few offences that may be proceeded against either summarily or by indictment, such are:

Sec. 82. Persuading soldiers or seamen to desert.

Two Justices of the Peace.

Sec. 169. Resisting peace officers or bailiffs, etc.

Two Justices of the Peace.

Sec. 208. Leases, etc., allowing immoral or indecent plays.

One Justice of the Peace.

Sec. 435. Being in possession of public stores, etc.

Two Justices of the Peace.

Sec. 438. Buying, etc., uniforms or arms of soldiers.

Two Justices of the Peace.

Sec. 439. Buying, etc., uniforms or arms of sailors or marines.

Two Justices of the Peace.

Sec. 440. Buying, etc., of any other property of sailors.
One Justice of the Peace.

Sec. 491. Offences against trade marks, etc.
One Justice of the Peace.

Sec. 499. Wilful breaking of certain contracts.
Two Justices of the Peace.

Sec. 501. Intimidation, etc.
One Justice of the Peace.

Sec. 503. Using violence to prevent selling or buying grain, etc.
Two Justices of the Peace.

In the above offences, the Crown has the option to lay an indictment or try before Justices without a jury except in that mentioned in section 501 which is the case of a charge of violence, intimidation, following, etc., to prevent anyone doing what he has the right to do, etc., *i. e.*, the offences generally charged against strikers interfering with those who do not wish to strike. There the accused has the option of being tried on an indictment if he desires.

There are two Courts in Ontario in which a trial on indictment (proper) can be had: The Supreme Court and the General Sessions (presided over by the County Court Judge). While the Supreme Court can try any indictable offence, it is not the practice to try in the Supreme Court any case which can be tried in the Sessions.

The Sessions cannot try treason and treasonable offences, murder and attempts and conspiracies to murder, rape and attempts, piracy, judicial and official corruption, bribery under influence and personation, defamatory libel, unlawful oaths, combinations in restraint of trade. (In case of a charge of combination in restraint of trade, the accused has the option of trial before a Supreme Court Judge without a jury.)

In addition to the ordinary Justice of the Peace there is in cities and towns and in many counties a magistrate, also appointed by the Province, called a Police Magistrate with the power of two Justices of the Peace. The Police Magistrate is generally a Barrister.

If a person is accused of crime he is brought up on summons or warrant before a magistrate, whether Justice of the Peace or Police Magistrate. If the offence is one for summary proceedings only, he is tried at once without his consent; if he is convicted he may appeal to the General sessions, where the matter is finally determined by the Judge without a jury.

If before a Police Magistrate charged with keeping or frequenting a disorderly house, the accused may be tried without his consent by the Police Magistrate. If, however, he is charged before a Police Magistrate with any offence triable in the Sessions, he may with his consent be tried by the Police Magistrate with the same effect as though tried at the Sessions. If he does not consent, the practice before a Police Magistrate is the same as before any Justice of the Peace — an investigation, and if a *prima facie* case is made out, a committal for trial.

Within twenty-four hours of the committal to gaol of any one charged with an offense triable in the Sessions, the Sheriff must take him before the County Court Judge. There the Judge looks at the depositions, explains to the accused what he is charged with and tells him he may be tried by a jury or by the County Court Judge at his option. If he elects to be tried by the County Court Judge, a day is set and the Judge tries the accused without a jury. If not, he is detained or allowed out on bail, to be tried at the Sessions.

Cases not triable at the Sessions must wait the sittings of the Supreme Court.

It will be seen that in cases triable at the Sessions there are two opportunities for an election to be tried without a jury when the accused is brought before a Police Magistrate first before the Police Magistrate himself and second before the County Judge. No cases are tried in the Sessions without a jury; and in the Supreme Court only offences in restraint of trade.

In places like Toronto, most of the criminal work is done by the Police Courts, and often the accused even after electing a jury before the Police Magistrate decides on a trial before the County Judge without a jury.

In Toronto in 1913, there were nine cases tried in the Criminal Assizes (Supreme Court), 118 in the Sessions, and 371 in the County Judge's Criminal Courts.

It would be of no advantage to go into the history of the method of selecting jurors, but it may be well to add a word as to the present system in Ontario. Every British subject in Ontario of full age, not infirm or decrepit, who is assessed as owner or tenant upon real or personal property worth not less than $600 in cities or $400 elsewhere (or whose wife is so assessed) is qualified to sit on a jury, grand or petit, in any Court.

There are, of course, exemptions, *e. g.,* men over sixty, members of the Government, in the civil service, local or Dominion, Judges and officers of the law, lawyers, doctors, chemists, etc., etc.

In each county there is a Board of "County Selectors" composed of the County Court Judges, the Mayor of any city within the county, the warden, the treasurer of the county and the sheriff (or in his absence the deputy sheriff) of the county, three being a quorum. Of these officers who form the Board of County selectors *ex officio,* the County Judges are appointed by the Dominion Government, the

sheriff by the Provincial Government, the mayor is elected direct by the people, and the warden and treasurer by the members of the County Council, themselves elected by the people each year.

They meet September 15th, and first decide the number of jurors that it will be necessary to summon. Thirteen is the number of grand jurors and generally forty-eight, though sometimes more, sometimes less, petit jurors for the Supreme Court, and a similar number for the inferior Courts.

They then make up the number to be called from each township, etc., within the county, and instruct the clerk of the peace to notify the clerk of each township, etc., of the number to be called from that municipality.

Then in each of these minor municipalities, the mayor (or reeve), the clerk and the assessors select such persons as in their opinion "are, from the integrity of their character, the soundness of their judgment, and the extent of their information, the most discreet and competent for the performance of the duties of voters," selecting twice as many as have been required by the county selectors — then they ballot for the proper number.

The clerk of the peace (a permanent officer appointed by the Provincial Administration) then makes up from reports from these selectors "The Jurors' Book," and those named are summoned. The Judges may at any time issue a precept for a greater number of jurors.

In Court the grand jurors are called, and if less than thirteen are present, the panel is filled by some person or persons selected by the sheriff in Court from the petit jury panel or otherwise.

When a jury case comes on for trial, the box or urn containing the name, address and occupation of each jury-

man, written on a separate card, is shaken so as sufficiently to mix the cards, and the cards are drawn one by one by the clerk, till a sufficient number of acceptable jurors has been obtained. A *tales* may be granted if necessary. Solicitors are entitled, on the payment of a small fee, to a copy of the jury panel four days before the opening of Court; this, of course, enables them to make inquiry as to the jurymen likely to be biased or prejudiced, and accordingly to use peremptory challenges wisely.

In civil cases each party has four peremptory challenges; I have never seen a challenge for cause.

In criminal cases, the Crown has four peremptory challenges, but may cause any number to stand aside until all the other jurors have been called. The accused has twenty challenges in any charge of crime punishable with death; twelve in offences punishable with more than five years' imprisonment, and four in other cases. Of course, challenges for cause are unlimited, but I never knew of any but one. I never, but once, heard a juryman asked a question, and I never knew it to take more than half an hour to procure a jury, even in a capital case.

The above refers to the Supreme Court (civil and criminal), the County Court (civil) and the General Sessions (criminal).

I have already said that any litigant having a claim over $30 (or $20 in certain cases) may demand a jury in the Division Court. When that occurs, the clerk takes the "Voters' List" of the municipality and takes, in order, the names of the voters in his division, and not less than twelve are summoned. Each party is entitled to two peremptory challenges, and any number for cause; and the jury consists of five jurors whose verdict must be unanimous. A *tales* may be granted also in the Division Court.